

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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BAE SYSTEMS SOUTHEAST SHIPYARDS	:	
AMHC INC., a Florida Corporation,	:	
	:	Case No. <u>1:19-cv-9658</u>
<i>Plaintiff,</i>	:	
	:	
v.	:	
	:	
THOMAS M. CLARKE, an individual, and	:	
ANA M. CLARKE, an individual,	:	
	:	
<i>Defendants.</i>	:	
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**COMPLAINT**

The Plaintiff, BAE Systems Southeast Shipyards AMHC Inc. (“**BAE Systems**”), by its undersigned counsel, hereby files this Complaint against the Defendants, Thomas M. Clarke (“**Mr. Clarke**”) and Ana M. Clarke (“**Mrs. Clarke**” and, together with Mr. Clarke, the “**Defendants**”), and alleges as follows:

**Nature of the Action**

1. This is an action to enforce the terms of a guaranty. On October 12, 2018, the Plaintiff entered into a transaction with Epic Maritime Asset Holdings, LLC (“**Epic Maritime**”) and permitted Epic Maritime to finance a portion of the transaction through a Non-Negotiable Term Promissory Note dated October 12, 2018 in the principal amount of \$10,000,000.00 (the “**Note**”). A true and complete copy of the Note is attached hereto as **Exhibit 1**.

2. The Note was guaranteed by the Defendants under the terms of a Personal Guarantee dated October 12, 2018 (the “**Guaranty**”). A true and complete copy of the Guaranty is attached here to as **Exhibit 2**. The Note has matured and remains unpaid.

**Parties, Jurisdiction and Venue**

3. Plaintiff BAE Systems is a corporation organized and existing under the laws of the State of Florida. BAE Systems maintains its principal place of business at 8500 Heckscher Drive, Jacksonville, Florida 32226.

4. Defendant Mr. Clarke is a citizen of the State of Virginia. Mr. Clarke maintains a place of business at 192 Summerfield Court, Suite 201, Roanoke, Virginia 24019.

5. Defendant Mrs. Clarke is a citizen of the State of Virginia. Mrs. Clarke maintains a place of business at 192 Summerfield Court, Suite 201, Roanoke, Virginia 24019.

6. Jurisdiction is based on 28 U.S.C. § 1332(a). There is complete diversity of citizenship because the Plaintiff is a citizen of the State of Florida and the Defendants are citizens of the State of Virginia. The amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

7. Venue is proper in this Court under 28 U.S.C. § 1391(a). Under paragraph 12 of the Guaranty, the Defendants have consented to jurisdiction and venue in this Court and waived any argument that venue in this judicial district is not convenient.

**Factual Background**

8. Pursuant to paragraph 1 of the Guaranty, the Defendants “irrevocably, absolutely and unconditionally” guaranteed to BAE Systems “the full and prompt payment when due” of the principal and interest owed by Epic Maritime under the Note.

9. The obligations of the Defendants under the Guaranty are joint and several.

10. Pursuant to paragraph 4 of the Guaranty, the Defendants agreed to reimburse BAE Systems for all “costs, expenses and attorneys’ fees paid or incurred” in connection with the collection and enforcement of the Guaranty.

11. The Note matured, and became due and payable in full, on October 12, 2019.

12. Epic Maritime defaulted on its obligations under the Note by, *inter alia*, failing to pay the amount due and owing on the maturity date under the Note.

13. The Defendants have defaulted on their obligations under the Guaranty by, *inter alia*, failing to pay the amount due and owing under the Guaranty.

14. As of October 14, 2019, the amount due and owing under the Guaranty, exclusive of attorneys' fees and collection costs, was \$10,589,296.00 (consisting of principal in the amount of \$10,000,000.00 and accrued interest in the amount of \$589,296.00), with interest continuing to accrue.

15. In addition, the Defendants are obligated under the terms of the Guaranty for payment of all costs, expenses and attorneys' fees incurred by BAE Systems in enforcing the Guaranty.

**Count I**  
**(Breach of Guaranty)**

16. BAE Systems restates and incorporates by reference the above paragraphs 1 through 15 as if fully set forth herein.

17. The Defendants have defaulted on their obligations under the Guaranty.

18. By letter dated October 15, 2019, BAE Systems made demand on the Defendants for payment of the amount owed under the Guaranty.

19. Despite demand, the Defendants have failed to pay the amount owed under the Guaranty.

WHEREFORE, the Plaintiff respectfully requests that the Court:

- (a) Enter judgment in favor of the Plaintiff and against the Defendants, jointly and severally, in the amount of \$10,589,296.00, together with pre-judgment interest from October 14, 2019 through the date of judgment, attorneys' fees and costs; and
- (b) Grant such other and further relief as is just and proper under the circumstances.

Dated: October 18, 2019  
New York, New York

Respectfully submitted,

/s/ Colleen Carey Gulliver  
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